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4 *e-filed 12/16/08*

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7 NOT FOR CITATION

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UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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HTC CORPORATION, HTC AMERICA INC.,

No. C08-00882 JF (HRL)
Related case Nos. 08-00877-JF, 08-00884-JF

12

Plaintiffs,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO COMPEL PLAINTIFFS'
DEPOSITIONS**

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TECHNOLOGY PROPERTIES, PATRIOT
SCIENTIFIC CORPORATION, ALLIACENSE
LIMITED,

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Defendants.

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17 Apparently after licensing negotiations were unsuccessful, HTC Corporation (“HTC”)
18 and HTC America Inc. brought this declaratory relief action against Technology Properties
19 Limited, Patriot Scientific Corporation, and Alliacense Limited to establish that plaintiffs’
20 products do not infringe defendants’ patents. Defendants moved to dismiss or, alternatively, to
21 transfer the case to the Eastern District of Texas, where two of the patents at issue had
22 previously been construed. Plaintiffs, in part, opposed the transfer because the Northern District
23 of California was a less burdensome forum for discovery, as “[w]itnesses and party
24 representatives from the Taiwanese entities can reach this district by taking a direct, non-stop
25 flight of about 11.5 hours from Taipei, Taiwan to San Francisco International Airport.”
26 Plaintiffs Opposition to Motion to Dismiss, Docket No. 35, pg 10, footnote 12. The motion to
27 dismiss or transfer was denied.
28

In planning for discovery, defendants requested that HTC agree to produce its
“percipient witnesses” for deposition in the Northern District of California. At the hearing,
defendants explained that by “percipient witnesses,” it meant any fact witnesses under
plaintiffs’ control located in Seattle or Taiwan. HTC objects, saying defendants should go to
Taiwan (or Seattle) for the depositions. Defendants now move for an order compelling HTC to
produce witnesses for deposition in this district. Since no deposition has been noticed, the court
will treat this motion as one for a protective order.

8 The matter has been fully briefed. The court held a hearing on December 16, 2008.
9 Upon consideration of the papers filed by the parties, and the arguments of counsel, this court
10 grants the motion in part and denies the motion in part.

Discussion

12 A party may unilaterally choose the place for deposing the opposing party, subject to the
13 granting of a protective order by the Court pursuant to Federal Rule of Civil Procedure 26(c)(2).
14 *Turner v. Prudential Ins. Co.*, 119 F.R.D. 381, 383 (M.D. NC 1988). When the opposing party
15 is a corporation, both its officers and directors and its employees have been treated as “opposing
16 parties,” the same as an Fed. R. Civ. P. 30(b)(6) designee. *See Delphi Automotive Systems LLC*
17 *v. Shinwa Intern. Holdings LTD*, 2008 WL 2906765 at *3 (S.D.Ind., 2008); *Cadent Ltd. v. 3M*
18 *Unitek Corp.*, 232 F.R.D. 625, 628 (C.D.Cal.,2005). In determining the appropriate place for
19 depositions, the trial court has broad discretion. *Id.* However, as a general rule, “plaintiff will be
20 required to make himself or herself available for examination in the district in which suit was
21 brought.” *Lexington Ins. Co v. Commonwealth Ins. Co*, 1999 WL 33292943 at *9 (N.D. Cal.
22 1999) (*citing* WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE, § 2112 at 75.) Other
23 courts have observed that “[this rule] not only permits predictability in prospective litigation, it
24 also pragmatically permits the trial court to resolve disputes which may take place during the
25 course of depositions without undue expenditure of time.” *Minnesota Mining & Manufacturing*
26 *Co. v. Dacar Chemical Products, Co.*, 707 F.Supp. 793, 795 (W.D.Pa.1989). The court is not
27 persuaded by plaintiffs’ contentions that they didn’t “choose” to bring the lawsuit, or “choose”

1 this forum because plaintiffs were “forced” to bring the lawsuit, and this was the only possible
2 venue.

3 HTC has cited cases supporting their contention that 30(b)(6) witnesses should be
4 deposed at their principal place of business, namely Taiwan. Nevertheless, at this point, no one
5 knows whether any of the Taiwanese employees will be designated as HTC’s witness for a
6 30(b)(6) deposition. And, although there is a general presumption that the deposition of a
7 corporate party should be taken at its place of business, *see, e.g., Thomas v. Int’l Business*
8 *Machines*, 48 F.3d 478, 483 (10th Cir. 1995), that presumption is not conclusive. Courts in this
9 district have noted that courts primarily apply this rule to defendants, since plaintiffs have the
10 luxury of choosing the forum. *See Lexington* at *9. Especially here, where plaintiffs not only
11 chose this forum, but fought for it because it was more convenient for its witnesses to travel to,
12 the court gives little weight to plaintiffs’ complaints that the forum is inconvenient and costly.

13 Lead counsel for all parties are located in this district. Plaintiffs specifically chose and
14 fought for this forum to reduce discovery costs, at least in part. In addition, this court’s authority
15 to resolve any disputes arising during a deposition could be compromised by sovereignty issues
16 if depositions took place in Taiwan, rather than in the United States. “If a federal court compels
17 discovery on foreign soil, foreign judicial sovereignty may be infringed, but when depositions
18 of foreign nationals are taken on American or neutral soil, courts have concluded that comity
19 concerns are not implicated.” *Delphi Automotive Systems*, at *2.

20 Based on the record presented, the court finds that it will be less costly and disruptive to
21 have all HTC’s 30(b)(6) designees deposed in this district. HTC shall bear all travel costs
22 associated with their designated 30(b)(6) witness(es). The depositions of any non-30(b)(6)
23 designated officers, directors, or HTC employees shall also take place in this district. However,
24 defendants shall pay the costs of business class airfare for these deponents. Should defendants
25 find it more cost effective to take the HTC employees’ consecutive depositions in Taiwan, they
26 may arrange to do so with HTC.

27 Since the court cannot contemplate every possible factual scenario that may arise as to a
28 particular deponent and the possible unfairness or unreasonableness of him or her having to

United States District Court

For the Northern District of California

1 travel to the Northern District of California, this order is without prejudice to any party's ability
2 to move for an exception for any individual deposition, should the parties' vigorous meet and
3 confer efforts fail. .

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6 **IT IS SO ORDERED**

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8 Dated: 12/16/08

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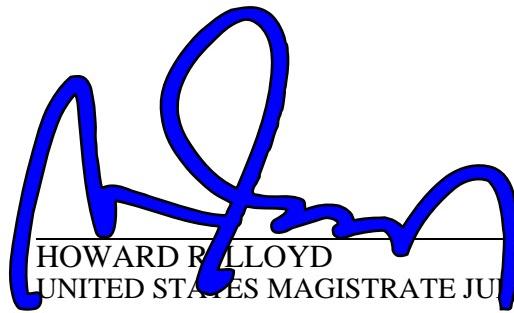
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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

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